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7 Attorneys for Nugget Construction Co., Inc.

8
9 IN THE UNITED STATES DISTRICT COURT
10
11 FOR THE DISTRICT OF ALASKA AT ANCHORAGE

12 UNITED STATES OF AMERICA for the)
13 use of NORTH STAR TERMINAL &)
14 STEVEDORE COMPANY, d/b/a NORTHERN)
15 STEVEDORING & HANDLING, and NORTH) No. A98-009 CIV (HRH)
16 STAR TERMINAL & STEVEDORE COMPANY,)
17 d/b/a Northern Stevedoring &) DEFENDANT NUGGET
18 Handling, on its own behalf,) CONSTRUCTION'S MOTION TO QUASH
19) SUBPOENAS TO GREG POYNER AND
20 Plaintiffs,) L.D. "RANDY" RANDOLPH AND FOR A
21 and) PROTECTIVE ORDER LIMITING
22) DISCOVERY
23)
24 UNITED STATES OF AMERICA for the)
25 use of SHORESIDE PETROLEUM, INC.,)
d/b/a Marathon Fuel Service, and)
SHORESIDE PETROLEUM, INC., d/b/a)
Marathon Fuel Service, on its own)
Intervening Plaintiffs,)
and)
METCO, INC.,)
Intervening Plaintiff,)
vs.)
NUGGET CONSTRUCTION, INC.; SPENCER)
ROCK PRODUCTS, INC.; UNITED)
STATES FIDELITY AND GUARANTY)
COMPANY; and ROBERT A. LAPORE,)
Defendants.)
_____)

1 COMES NOW, Defendant Nugget Construction, Inc. by and through
2 its counsel of record, Oles Morrison Rinker & Baker LLP, seeking
3 an order from the court quashing subpoenas issued by Plaintiff
4 North Star to Greg Poyner and L.D. "Randy" Randolph and for a
5 protective order precluding further discovery of these
6 individuals.

7
8 **I. BACKGROUND AND ARGUMENT**

9 **A. Plaintiffs May Not Retake The Depositions Of Messrs.**
10 **Poyner And Randolph Without Leave Of The Court.**

11 On February 28, 2006, Plaintiff North Star issued subpoenas
12 for Greg Poyner, Defendant Nugget's General Manager, and L.D.
13 "Randy" Randolph, Nugget's former project manager, demanding their
14 presence for depositions on March 9 and 10, respectively. Because
15 both individuals have previously been deposed in this matter, and
16 because Plaintiffs have failed to obtain leave of the court
17 pursuant to Fed. R. Civ. Pro. 30 (a) (2) (B) (*Dixon v. Certainteed*
18 *Corp.* 164 F.R.D. 685, 690 (D.Kan. 1996) (counts will generally not
19 allow a second deposition absent good cause), Plaintiffs are
20 precluded from retaking the requested depositions.

21
22 On February 6, 2006, counsel for North Star informed Nugget's
23 counsel that North Star wished to redepose Mr. Randolph before the
24 close of discovery. This request was confirmed by North Star's

1 counsel in an e-mail of the same date. That same e-mail restated
2 Nugget's position that it required an explanation as to why the
3 retaking of Mr. Randolph's deposition was justified or it would
4 seek a protective order precluding the deposition.

5 Having inquired as to Mr. Randolph's general availability for
6 depoition, on February 8, 2006, Nugget's counsel sent an e-mail
7 to all counsel that stated in part: "I will also reiterate my
8 objection to his depo being retaken unless we get an agreement on
9 its scope before hand." Then again on February 10, Nugget's
10 counsel e-mailed everyone and stated: "In addition, I have yet to
11 receive any justification for reopening his deposition, which
12 needs to be resolved before his deposition is taken. Please
13 provide me with your proposed scope of inquiry and reasons for
14 reopening it so that we can work toward an agreement on that
15 issue."
16

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18 As of February 14, 2006, Plaintiffs had not provided any
19 justification for reopening Mr. Randolph deposition, so Nugget's
20 counsel again inquired via e-mail:

21 I have not heard any more about Randy's situation, so
22 I don't know whether he is available on the 28th.
23 However, I still have not been provided any
24 information regarding the scope of the inquiry or any
25 justification for reopening the deposition. Absent an
agreement on the scope of the deposition before hand,
I will have no choice but to move to quash, which will

1 likely delay getting these depositions wrapped up.
2 Please provide me with your basis for reopening
3 Randolph's deposition as soon as possible, so that we
4 can put this issue behind us.

5 On February 16, 2006, North Star indicated for the first time
6 that it wished to redepose Mr. Randolph because of documents that
7 had been produced in the litigation since his first deposition.
8 Because the only truly new documents disclosed since the original
9 exchanges at the outset of the litigation were the financial
10 documents the court compelled be produced in January, on February
11 20, Nugget objected to Mr. Randolph being deposed to inquire into
12 those documents, as Mr. Randolph was never an employee of Nugget's
13 and therefore was not privy to the financial condition of Nugget.
14 North Star responded on February 21 that it was not intending to
15 focus on the financial documents,¹ but instead was relying on the
16 electronic files that had been produced in 2005 and issues set
17 forth in its Second Discovery Requests (which will be discussed
18 below).

19 On February 28, 2006, North Star issued a deposition and
20 document subpoena to Mr. Randolph requiring him to appear on the
21 previously agreed to date of March 10, 2006. In addition, it also
22

23
24 ¹ Plaintiffs recently deposed Nugget's Vice President, who was designated the
25 person with the most knowledge regarding the financial information, during the
26 continuation of the 30 (b)(6) deposition.

1 subpoenaed Mr. Poyner, Nugget's General Manager, for a deposition
2 on March 9, 2006.² After reviewing the subpoenas and the
3 electronic documents purportedly being relied on by North Star to
4 justify its reopening of Mr. Randolph's deposition, Nugget's
5 counsel e-mailed North Star's counsel and pointed out that there
6 was no new information contained in electronic files that was not
7 available to North Star when it first deposed both of the
8 individuals, and that given the lack of meaningful testimony to be
9 elicited, asked that the depositions be stricken.
10

11 On March 2, 2006, counsel for North Star declined to strike
12 the motions and instead stated that it intended to inquire into
13 any matters that has been discovered since the first depositions
14 were taken. However, North Star did not cite a single example of
15 what was unavailable to it when the depositions were first taken,
16 other than the electronic files produced last Fall and some
17 irrelevant documents recently requested. Thus, Plaintiffs merely
18 appear to be on a costly, unsupportable, fishing expedition. As
19 such, Nugget objects to the retaking of either Mr. Poyner's or Mr.
20 Randolph's deposition.
21
22
23

24 ² Plaintiffs indicated that they may wish to depose Mr. Poyner regarding the
25 electronic documents, but there had been no correspondence confirming this
interest prior to the issuance of the subpoena.

B. Plaintiffs Seek Irrelevant And/OR Attorney Client Information From Mr. Randolph.

Attached to the subpoena commanding Mr. Randolph's March 10, 2006 deposition is a list of documents he is expected to bring. The list includes a demand that Mr. Randolph produce "Any and all records or other documents requested by Request for Production No. 11 insofar as referring to Interrogatory Nos. 6 through 11 set forth in North Star's Second Set of Discovery Requests to Defendant Nugget Construction, Inc. dated February 14, 2006." Interrogatories 6 through 9 relate to questions as to Oles Morrison Rinker & Baker LLP's attorney/client relationship with Mr. Randolph in his private capacity and with questions about whether Mr. Randolph had served as an expert working for Oles Morrison Rinker & Baker for clients other than Nugget. Interrogatories 10 and 11 relate to Nugget's attorney/client relationship with Oles Morrison Rinker & Baker on matters other than the present suit. The subpoena attachment also seeks documents relating to "the employment and/or contractual arrangements between L.D. "Randy" Randolph or LDR Engineering Services, on the one hand, and the Oles Morrison Rinker & Baker law firm (by that or any other name), ..., on the other hand."

1 None of these inquiries is proper, as they are irrelevant to
2 the present litigation, are not likely to lead to the discovery of
3 admissible evidence, and seek attorney client privileged
4 information. Because any relationship between Mr. Randolph and
5 Oles Morrison are either privileged or irrelevant, Nugget and Mr.
6 Randolph move to quash these document demands.

8 **C. Nugget Seeks A Protective Order To Preclude Further**
9 **Discovery Of Messrs. Poyner And Randolph.**

10 Because of the nature and extended timeframes associated with
11 this case, Nugget was amenable to reopening the deposition of Mr.
12 Randolph, provided Plaintiffs could articulate a reasonable basis
13 for doing so. However, despite numerous requests that they
14 provide such an explanation for reopening the deposition, they
15 have never articulated one valid reason to justify the cost and
16 burden of redeposing Mr. Poyner or Mr. Randolph. Instead,
17 Plaintiffs' subpoenas appear to be nothing more than an attempt to
18 obtain a second bite at the apple for both of these witnesses,
19 which is cumulative, duplicative, burdensome, and expensive, and
20 therefore, improper. Plaintiffs reliance on the production of
21 electronic documents is insufficient to justify redeposing these
22 individuals unless they can demonstrate that there is something
23 that was not available to them in the hardcopies previously
24

25 *U.S. ex rel. North Star, et al. v. Nugget Construction, et al.*
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1 produced. Counsel for North Star's generic statement that there
2 has been lots of discovery since the original depositions, thereby
3 justifiing retaking these two, is too vague and open ended to
4 provide a legitimate reason to force Nugget and these witnesses to
5 be subjected to a second inquiry.

6 It is still possible that an agreement can be reached with
7 regard to the scope of appropriate testimony for Messrs. Poyner
8 and Randolph prior the the currently scheduled depositions.
9 However, in the event the parties are unable to agree to allow the
10 depositions to go forward, Nugget asks this court for a protective
11 order precluding Plaintiffs from conducting any further discovery
12 of Messrs. Poyner and Randolph. In addition, Nugget also seeks a
13 protective order precluding Plaintiffs from inquiring into Mr.
14 Randolph's independent relationship with Oles Morrison Rinker &
15 Baker.
16

17
18 DATED this 6th day of March, 2006.

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CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of March, 2006, a true and correct copy of the foregoing was served

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